

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

AMGUARD INSURANCE COMPANY)
)
vs.)
)
A&H TOWING, LLC, HAROLD)
PADGETT, AUSTIN R. PADGETT,) CASE NO.: 1:21-cv-00075
and JOHN D. VENABLE,)
)
vs.)
)
JANICE KILLEN, MAXWELL KENNETH)
HOWARD, Deceased bnf MELISSA) JURY TRIAL DEMAND
CARTER, and MELISSA D. CARTER,)
)
Necessary Party Defendants.) PLAINTIFF'S NOTICE OF REPEATED
) TECHNICAL FAILURE OF IDENTICAL
) NATURE
)

COMES NOW, counsel for AmGuard Insurance Company (“Guard” or “Plaintiff”), Plaintiff in the above-styled civil action, Pamela Bagley Webb, and submits this Notice of Repeated Technical Failure pursuant to Section VIII of the United States District Court, Middle District of Tennessee User Manual, Case Management Electronic Case Filing System (CM/ECF) Version 6.2.3.

Counsel for Plaintiff files this notice after experiencing, despite having the circumstances remedied with testing for the purpose of insuring that the circumstances would not arise in future e-filing transactions, the identical technical issues as were experienced at the time of attempted filing of Plaintiff’s Motion for Summary Judgment and associated pleadings, not only inside the server of counsel for Plaintiff’s law firm as occurred previously on January 13, 2023, but also manifested themselves when counsel for Plaintiff attempted to resolve the technical issues as she was successful in doing on January

13, 2022. For whatever reason, the error messages recurred not only inside the firm server, but counsel for Plaintiff's browser outside the server.

Counsel for Plaintiff offers this notice as notice to the Court of the utmost respect that she has for this Court and its prior Order and to make the Court aware that she took steps following the technical failures that occurred on January 13, 2022 to resolve the issues so that no problems would arise in the future. Counsel for Plaintiff states that she attempted continuously over more than an hour prior to the filing deadline to sign in to the ECF system, to insure that she would have ample time to file the two pleadings, and in fact, believed that she would have additional time to review her pleadings prior to filing, but that was not the case due to experiencing the same error messages again as she experienced on January 13, 2023.

Counsel for Plaintiff would request that in the event that this Court is so inclined, that any consequences be directed solely at Plaintiff's counsel herself, and not against Plaintiff, as the cause of the delayed filing was not based on any act or omission of the party, but should instead be borne by their counsel, although counsel's persistent efforts and technical support requests and multiple remedies were ultimately successful in gaining access to the ECF system.¹

Should this Court be inclined to issue Plaintiff relief under Section VIII of the United States District Court, Middle District of Tennessee User Manual, Case Management Electronic Case Filing System (CM/ECF) Version 6.2.3 for the filing of *Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment* and *Plaintiff's*

¹ Counsel for Plaintiff would welcome the opportunity to undergo extensive technical training on ECF technical issues, clearly at her own expense, and to offer *pro bono* training or provide *pro bono* legal assistance to the extent that the Court is amenable to these proposed remedies being a component of any desired outcome that the Court determines is just and proper based on counsel for Plaintiff's repeated issues with the e-filing deadlines and system.

Response to Defendant's Statement of Undisputed Facts, counsel for Plaintiff would abide by the Court's direction as a result of the repeated issues that presented themselves prior to and at the time of both filings.

Based on the above, counsel for Plaintiff states is mortified, to say the least, and offers her most sincere apologies, self-dissatisfaction and deep regret for any inconvenience that she has caused the Court and Defendants' counsel, who she has worked with on prior matters and has the utmost respect for both personally and professionally. Counsel for Plaintiff hereby requests that the Court exercise its discretion in considering Plaintiff's request, as no prejudice to any party or delay of or inefficiency in the proceedings should result.

Dated: February 11, 2023

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

/s/ Pamela Bagley Webb
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*Counsel for Plaintiff
AmGuard Insurance Company*

CERTIFICATE OF SERVICE

I certify that on February 11, 2023, the undersigned filed the foregoing ***PLAINTIFF'S NOTICE OF REPEATED TECHNICAL FAILURE OF IDENTICAL NATURE*** with the Court via the CM/ECF filing system, which will serve such filing on all counsel of record and upon the following parties by regular U.S. Mail, with adequate postage affixed thereto:

Mackenzie Cover, BPR 036773 Laura Mackenzie Cover Michael D. Ponce & Associates 400 Professional Park Drive Goodlettsville, TN 37072 (615) 851-1776 mackenzie@poncelegal.com <i>Counsel for Necessary Party Defendant</i> <i>Janice Killen</i>	R. Holland Matthews, BPR 030486 Richard T. Matthews, BPR 06680 THE MATTHEWS FIRM, PLLC 700 N. Main Street Columbia, TN 38401 Phone: (931) 381-2460 holland@matthewsinjurylaw.com richard@matthewsinjurylaw.com <i>Counsel for Defendants</i> <i>A&H Towing, Harold Padgett,</i> <i>Austin Padgett, and John D. Venable</i>
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/s/ Pamela Bagley Webb
Pamela Bagley Webb